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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KEVIN ANTOINE JONES, Defendant and Appellant.	E049211 (Super.Ct.No. RIF148355) OPINION

APPEAL from the Superior Court of Riverside County. Carl E. Davis, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Victoria S. Cole, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Kevin Vienna, Douglas Danzig, and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

On June 12, 2009, an amended information charged defendant and appellant Kevin Antoine Jones with possession of marijuana for sale under Health and Safety Code section 11359. The information also alleged three prison priors and one strike prior under Penal Code sections 667.5, subdivision (b), 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

A jury found defendant guilty as charged. Thereafter, defendant admitted the truth of the prior allegations. On July 31, 2009, the trial court sentenced defendant to state prison for four years eight months. On appeal, defendant contends that there is insufficient evidence to support his conviction. For the reasons set forth below, we shall affirm the judgment.

II

STATEMENT OF FACTS

Around 10:24 a.m. on February 4, 2009, Riverside Police Officer Sahagun was on patrol when he observed a black Honda in the area of Chicago and University Avenues in Riverside. Officer Sahagun noticed that the car lacked a rear license plate, in violation of Vehicle Code section 5200. Therefore, the officer pulled the Honda over. Officer Sahagun was assisted by another officer in a separate patrol car.

After Officer Sahagun contacted the driver and advised him why he had been pulled over, defendant, who was sitting in the front passenger seat, interjected and told

the officer that he was the registered owner of the car. The officer recalled that defendant also provided proof of the car's registration to him.

Officer Sahagun asked to search the car; defendant agreed. Defendant did not appear nervous when he gave consent. Before conducting the search, however, Officer Sahagun conducted a pat down search for the officers' safety. Defendant appeared very sweaty when Officer Sahagun escorted him out of the car. The officer found two cell phones, but did not find any weapons or drugs on defendant.

When Officer Sahagun went to pat down the driver, Mr. Brigett, Mr. Brigett advised the officer that he had marijuana in his pocket. Consistently, the officer found a plastic bindle containing approximately 6.7 grams of marijuana in Mr. Brigett's pant pocket. Mr. Brigett did not appear nervous during his encounter with the officer.

A subsequent search of defendant's car produced 25.6 grams more of marijuana. It was located by the back of the engine, to the top right corner of the engine compartment. It was in a black mitten containing a baggie filled with 17 bindles of marijuana. Each bindle ranged from 1 to 1.5 grams. The mitten appeared to have been recently placed in the engine compartment. It did not appear dirty with engine grease or burn marks. Moreover, the odor of marijuana emanating from the glove was strong. Marijuana odor dissipates with age of the marijuana.

Both defendant and Mr. Brigett denied any knowledge of the marijuana found in the engine compartment of defendant's car. Officer Sahagun cited Mr. Brigett for marijuana possession for the amount found on him and released him. The officer then

booked defendant for possession for sale, concluding that defendant would know what was in his car.

Marc Bender, a Riverside County Sheriff's investigator, listened to all of the testimony at trial. Thereafter, he testified on behalf of the prosecution as a narcotics expert. Investigator Bender had 27 years of experience as a deputy sheriff, with the majority of his time spent working with street drugs including undercover purchases, working with informants and interviewing offenders. After listening to all of the testimony and evidence, Investigator Bender was of the opinion that the marijuana found in the engine compartment of defendant's car was for sale. Although the quantity could have been for personal use, the packaging style was consistent with dope dealing. Investigator Bender noted that drug users do not put personal use marijuana into so many different bags.

Investigator Bender additionally testified that, based on training and experience in the area of narcotic sales, if defendant had been selling out of the car, he would have expected to find it in the passenger compartment. The driver usually drives, while the seller sits in the passenger compartment and deals from there; taking money in exchange for drugs. However, if the marijuana was just being transported, then Investigator Bender would expect the drug dealer to hide it elsewhere since street cops typically limit their search to the passenger compartment. Like Officer Sahagun, Investigator Bender opined that defendant would have known there was marijuana in his engine compartment. Investigator Bender explained that based on the thousands of cases like this that he has

handled, "every one of them the person knew, so I would say yes, to my knowledge from what I know, yes, he knew." Based on his training and experience, Investigator Bender could also tell the marijuana possessed by defendant was high grade domestically-grown marijuana. It is 10 times more expensive than normal "street weed."

III

ANALYSIS

Defendant contends that there was insufficient evidence to support his conviction for unlawful possession of marijuana for sale.

Our review of any claim of insufficiency of the evidence is limited. If the evidence presented below is subject to differing inferences, the reviewing court must assume that the trier of fact resolved all conflicting inferences in favor of the prosecution. (*Jackson v. Virginia* (1979) 443 U.S. 307, 326.) A reviewing court is precluded from making its own subjective determination of guilt. (*Id.* at p. 319, fn. 13.) In *People v. Perez* (1992) 2 Cal.4th 1117, our high court held: "[T]he relevant question on appeal is not whether *we* are convinced beyond a reasonable doubt, but whether *any* rational trier of fact could have been persuaded beyond a reasonable doubt . . . ." (*Id.* at p. 1127.)

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient

substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; see also *People v. Hill* (1998) 17 Cal.4th 800, 848-849.)

Given this court's limited role on appeal, defendant bears an enormous burden in claiming there was insufficient evidence to sustain his conviction for possession of marijuana for sale. If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) It is the exclusive function of the trier of fact to assess the credibility of witnesses and draw reasonable inferences from the evidence. (*People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Hale* (1999) 75 Cal.App.4th 94, 105.)

Defendant's hurdle to secure a reversal is just as high when the prosecution's case depends on circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792, citing *People v. Bean* (1988) 46 Cal.3d 919, 932.) "'"'"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.'" [Citations.]'" (*Stanley*, *supra*, at p. 793, quoting *Bean*, *supra*, at pp. 932-933.) Here, the record discloses ample evidence to support the jury's verdicts.

In this case, defendant was convicted of unlawfully possessing marijuana for sale: "The essential elements of unlawful possession of [marijuana] are 'dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character. Each of these elements may be

established circumstantially.' [Citations.]" (*People v. Martin* (2001) 25 Cal.4th 1180, 1184.)

"Knowledge by the defendant of both the presence of the drug and its narcotic character is essential to establish unlawful transportation, sale, or possession of narcotics. [Citations.] Such knowledge may be shown by circumstantial evidence. [Citation.]" (*Rideout v. Superior Court* (1967) 67 Cal.2d 471, 474-475; see also *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242; *People v. Williams* (1971) 5 Cal.3d 211, 215; *People v. Meza* (1995) 38 Cal.App.4th 1741, 1746.) "[P]roof of opportunity of access to a place where narcotics are found, without more," is insufficient to prove knowledge. (*People v. Redrick* (1961) 55 Cal.2d 282, 285.) "As might be expected, no sharp line can be drawn to distinguish the congeries of facts which will and that which will not constitute sufficient evidence of a defendant's knowledge of the presence of a narcotic in a place to which he had access, but not exclusive access, and over which he had some control, but not exclusive control." (*Id.* at p. 287.) In these types of cases, constructive possession has been inferred from evidence that the drugs were discovered among the defendant's personal effects or circumstances showing a consciousness of guilt. (*Id.* at pp. 287-288.)

"'[W]hen narcotics are found concealed in or about an automobile, at least where such automobile is in the possession of the owner or his entrustee, the [trier of fact] may infer knowledge on the part of the owner.'" (*People v. Waller* (1968) 260 Cal.App.2d 131, 142, cert. den. (1969) 393 U.S. 1039 [89 S.Ct. 663, 21 L.Ed.2d 586], quoting *People v. One 1940 Chrysler* (1946) 77 Cal.App.2d 306, 314.) This is true even where another

witness tries to take the blame. (See *People v. Llamas* (1997) 51 Cal.App.4th 1729, 1743 [defendant was in possession of his wife's car when gun was found in engine compartment; jury could reject wife's testimony that she was the one who hid the gun].)

Defendant here argues his conviction for possession for sale of marijuana should be reversed because the evidence failed to show that he knew the marijuana was in the car. We reject this contention because the circumstantial evidence in this case reasonably supports an inference that defendant knew marijuana was in the car. It is undisputed that defendant had access to the car; he was the registered owner of the vehicle and sitting in the front passenger seat of the car.

Moreover, "[k]nowledge of the presence of contraband and of its narcotic content may be inferred from the accused's conduct or statements at or near the time of his arrest. [Citations.]" (*People v. Solo* (1970) 8 Cal.App.3d 201, 206, disapproved on another ground in *People v. Rogers* (1971) 5 Cal.3d 129, 134, fn. 4.) In the present matter, defendant appeared sweaty during his encounter with law enforcement, even though he had no narcotics on his person. Defendant's demeanor at the time he was questioned gives rise to a reasonable inference that he knew of the presence of the marijuana in the car.

Additionally, the inference that defendant either put or knew about the marijuana in the engine compartment is further reinforced by the fact that defendant's driver, when patted down, had drugs on his person. Mr. Brigett, unlike defendant, did not plan for the contingency of being pulled over; he did not hide his drugs. Contrary to defendant's

suggestion, the fact that Mr. Brigett possessed drugs did not undermine the evidence of defendant's guilt; instead, it bolstered it.

Furthermore, Investigator Bender provided additional evidence, namely, his opinion based on "thousands of cases like this [that he worked on] and every one of them the person knew, so I would say yes, to my knowledge from what I know, yes, [defendant] knew." Defendant argues that this evidence lacked foundation and was too speculative. We note that defendant made no objection to this testimony during trial. In fact, this testimony was elicited by defense counsel during the cross-examination of the investigator. Moreover, the investigator testified he had over 26 years of experience in narcotics, and specifically had worked on thousands and thousands of cases like this, so his testimony neither lacked foundation nor was speculative. Instead, it was his expert opinion, based on his experience, which was again elicited by the defense. Defense counsel also made it clear that the investigator was drawing the conclusion from past cases and not because he had any additional knowledge about defendant personally regarding marijuana, so the jury was fully aware of any weakness in the investigator's testimony.

In sum, the circumstantial evidence adduced at trial and the reasonable inferences drawn from the evidence support the jury's conclusion that defendant knew of the presence of the marijuana located in his car. Defendant's arguments to the contrary are to no avail. Accordingly, viewing the evidence most favorably to the People, we conclude that there was substantial evidence to support the verdict.

IV

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.

/s/ King
J.